

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL PALADINO,

Defendant-Appellant.

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UNPUBLISHED

August 7, 2003

No. 234969

Oakland Circuit Court

LC No. 87-082563-FC

Before: Hoekstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver more than 650 grams of cocaine. Following a jury trial, he was convicted by a jury of possession of over 650 grams of cocaine, MCL 333.7403(2)(a)(1), and possession of marijuana, MCL 333.7403(2)(d), and was sentenced to life imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred by failing to instruct the jury that knowledge of the amount of drugs in a defendant's possession is an element of the crime of possession with intent to distribute over 650 grams of cocaine. We disagree. Knowledge of quantity is not an element of the crime of possession with intent to deliver. *People v Marion*, 250 Mich App 446; 647 NW2d 521 (2002).

Defendant also argues that trial errors occurred which so infected the proceedings that the resulting convictions violated defendant's due process rights. Defendant first asserts that the trial court prevented defendant from arguing witness bias to the jury and in the process prevented defendant from presenting a full defense when the court directed the jury to disregard a portion of defense counsel's closing argument. The record does not support defendant's argument. The trial court recognized defendant's right to put the issue of witness bias before the jury when it ruled, both before trial and at trial but before defense counsel's opening statement that defendant could raise the question of witness bias. The statement that the trial court instructed the jury to disregard, namely, "[a]nd now it's in State court. And the reason is because [defendant] wouldn't cooperate," simply had nothing to do with the question of witness bias. Rather, the statement's sole implication was that defendant was being prosecuted solely because he refused to cooperate with the United States Attorney's Office. Accordingly, because this Court had previously ruled that no vindictive prosecution occurred in this case, the trial court was simply conforming to this Court's prior ruling in instructing the jury to disregard defense counsel's

statement. By instructing the jury to disregard the statement the trial court did not prevent defendant from arguing witness bias to the jury.

Moreover, it is clear from the transcript that defendant did, in fact, put the issue of witness bias before the jury. Defense counsel cross-examined the prosecution witnesses as to any bias or motive they might have. Defense counsel also stated in his closing argument that the DEA agents who testified on behalf of the prosecution were motivated to testify against defendant because he refused to become an informer for them, and that they were willing to change their testimony to ensure he was convicted. Thus, defendant's argument is without merit.

Defendant next asserts that the trial court violated defendant's rights to silence and due process by permitting the prosecution to introduce testimony that defendant initially answered DEA agents' questions, but then subsequently refused to answer questions. We disagree.

The silence of an accused in the face of police questioning may not be used against the accused at trial, except to contradict assertions that a statement was made to police, because to do otherwise would place an impermissible penalty on the exercise of the accused's right against self-incrimination. *People v Bobo*, 390 Mich 355, 357; 212 NW2d 190 (1973); *People v Swan*, 56 Mich App 22, 31; 223 NW2d 346 (1974). However, where a defendant has waived his right of silence, the police are entitled to testify to any incriminating statements made by the defendant, as well as to indicate the end, as well as the beginning, of the interrogation, so long as it is not done with undue emphasis, so that the jury will know that the officers' testimony was complete. *People v McReavy*, 436 Mich 197, 215-216; 462 NW2d 1 (1990), citing *Rowan v Owens*, 752 F2d 1186 (CA 7, 1984).

Far from the scenario envisioned in *Doyle v Ohio*, 426 US 610; 96 S Ct 2240; 49 L Ed 2d 91 (1976), where a defendant refuses to say anything after given his *Miranda* warnings, defendant in this case waived his right to silence and answered the DEA agents' questions, then made no response to some questions, then again answered the agents' questions, before refusing to answer any further questions. Accordingly, we find that the trial court did not abuse its discretion in permitting the prosecutor to introduce the challenged testimony of Agent Riddle. To the extent the prosecutor's argument impermissibly sought to use defendant's post-*Miranda* silence as evidence, we find that the comment did not affect the outcome of the trial.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ E. Thomas Fitzgerald  
/s/ Helene N. White